

MAY 11 2004

PTO/SB/64 (11-03)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

First named inventor: Link, Gayle R.

Application No.: 09/853,337

Art Unit:

Filed: May 10, 2001

Examiner:

Title: Optical wavelength router

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX: (703) 308-6916

NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a
notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the
expiration date of the period set for reply in the Office notice or action plus an extensions of time
actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications
filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity-fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in

the form of _____ (identify type of reply):

- ☐ has been filed previously on _____.
- ☐ is enclosed herewith.

B. The issue fee and publication fee (if required) of \$ _____.

- ☐ has been paid previously on _____.
- ☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and by the
USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete,
including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments
on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent
and Trademark Office, U.S. Department of Commerce, P.O. 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS
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05/13/2004 SLUANG1 00000024 09853337

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3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE. The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

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5/12/04

Date

Telephone

Number: 404-543-8300

Signature

Gayle R. Link

Typed or printed name

3162 Johnson Ferry Road, Suite 260-624

Address

Marietta, GA 30062

Address

Enclosures: ☒ Fee Payment☐ Reply☐ Terminal Disclaimer Form☒ Additional sheets containing statements establishing unintentional delay☐ Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

5/12/04

Date

Signature

Gayle R. Link

Type or printed name of person signing certificate



May 11, 2004

Commissioner for Patents
US Patent & Trademark Office

Patent Application 09/853,337 filed May 10, 2001 was unintentionally abandoned. Our legal representation, Brobeck, Phleger, & Harrison Of 12390 El Camino Real, San Diego, CA 92130, US filed for bankruptcy and went out of business during 2003. They ceased operations and are no longer actively looking after our interests or responding to requests by the US Patent & Trademark Office (USPTO). Neither the assignee of this application (Luxcore Networks) or any of the inventors were aware that requests from the USPTO were being ignored or abandoned. We only learned that Brobeck was closing in November of 2003 with a statement placed on their website. That statement, along with additional articles which Luxcore Networks researched highlighting the Brobeck situation, is attached for your review.

The assignee (Luxcore Networks) wishes that the USPTO reinstate the patent application 09/853,337 which was unintentionally abandoned.

Sincerely,

A handwritten signature in black ink, appearing to read "Gayle Link". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gayle Link
VP of Product Development
Luxcore Networks, Inc.



The Liquidation Committee of Brobeck, Phleger & Harrison LLP has learned that on September 17, 2003, creditors of the Firm filed an involuntary petition (naming the Firm as the Debtor) in United States Bankruptcy Court, Northern District of California, Bankruptcy Case No. 03 32715DM. The petition was filed under Chapter 7 of the Bankruptcy Code. The matter has been set for a status conference on November 7, 2003 at 1:30 PM.

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Brobeck Phleger & Harrison to fold

Abstract

San Francisco's *Brobeck Phleger & Harrison*, once the self-proclaimed 'Technology' standard bearer, has announced it is to dissolve following two difficult years in which it has experienced falling revenues, partner defections, staff lay-offs, and the ousting of its former Chairman **Tower Snow**.

• *Scott Appleton, Global Counsel 3000*

Fulltext

San Francisco's *Brobeck Phleger & Harrison*, once the self-proclaimed "Technology" standard bearer, has announced it is to dissolve following two difficult years in which it has experienced falling revenues, partner defections, staff lay-offs, and the ousting of its former Chairman **Tower Snow**.

In a statement yesterday the firm announced it is to dissolve the partnership and seek bankruptcy protection; some reports suggest it has debts of around US\$90 million with its bankers Citibank.

Only two years ago Brobeck was riding high on the crest of the Bay area technology wave, had launched a US\$3.5 million advertising campaign on CNN, and announced record profits per partner of US\$1 million.

But the collapse of the technology economy and the moribund capital markets saw revenues drop by 25% leaving the 920 lawyer firm short of corporate work and long on overheads. One of the firm's current advertising straplines prophetically reads, "Brobeck: when your future is at stake".

The firm's financial situation was little helped by the stance of its management team, led by Chairman Tower Snow, who despite internal pressure refused to follow the lead of its fellow Bay area firms and implement associate lay-offs.

The firm that had led the way in the dot-com years with US\$125,000 associate starting salaries had become a victim of its own success. By last year profits per partner had dipped to US\$555,000.

Tensions within the partnership reached such a level that Snow chose not to seek re-election as Chairman in November 2001, his replacement **Richard Odom** implemented a program of redundancies within weeks.

Within six months Snow was ousted from the partnership completely after it was revealed he was in talks with Clifford Chance over the possible lateral move of himself and up to 35 other partners to establish the UK firm's West Coast presence.

Ultimately Snow and 17 other partner left, the departures followed by IP lead James Elacqua and 11 other partners to *Dewey Ballantine*. Within the past year around 60 partners have departed the ailing firm.

Merger rumours linked Brobeck to a number of potential suitors as it sought to instill stability within its depleted ranks, including *Pennie & Edmonds* and *Hogan & Hartson*.

The firm was ultimately matched with Philadelphia and Washington DC based *Morgan Lewis*, which it is reported agreed to merge in principle with Brobeck earlier this month following a partnership vote.

But further defections from Brobeck in the past week compounded problems relating to its outstanding debt. A spokesman for the now 520 lawyer firm said it has been left with little choice but to call it a day while it remains viable.

Brobeck hopes to relocate wholesale many of its practice groups to other firms. It seems likely that large elements will move across to its Bay area competitors, while its UK and German operations look set to move across to its international joint venture partner *Hale & Dorr*, other elements it is assumed will continue across to its one-time potential saviour Morgan Lewis.

Article information

Resource info

- Article ID: a28301
- Publication date: 2003-01-31
- Free access

Jurisdiction

USA - <http://www.practicallaw.com/t318>

Resource Type

News archive - professional - <http://www.practicallaw.com/t585>

Subject

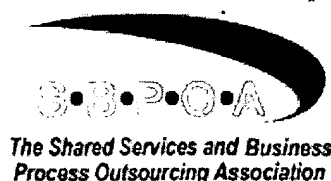
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Bell Tolls For Prominent Legal Advisor Brobeck, Phleger & Harrison

Posted by: editor on Sep 02, 2003 - 09:39 PM

On January 31, 2003, the legal and sourcing advisory community was stunned by the news that one of San Francisco's most powerful law firms would likely close its doors following an unsuccessful attempt by the firm to merge with Philadelphia-based Morgan, Lewis & Bockius. The announcement was especially shocking as it marks the end of a major institution with a 77-year history and a strong reputation as a thought leader and innovator.

In December of 2000, Brobeck was selected by Fortune Magazine as one of America's "100 Best Companies to Work For." Even in today's economic gloom, the downfall of a large law firm of Brobeck's stature is highly unusual – even though the legal marketplace has become intensely competitive for talent and clients and is experiencing an increasing number of consolidations, just as are most businesses.

Brobeck rode the Internet boom, reaching a size of about 900 lawyers in year 2000 but, like so many other organizations, was affected severely by the crash of dotcoms and the slowdown of IPOs, a specialty of the firm. Over the last year, partners began leaving the firm along with some of their clients and associates, including the Chairman Tower Snow who took 16 partners with him to join a rival organization. Layoffs became imminent as the firm could no longer meet its financial obligations, and the number of lawyers dropped quickly to about 500 by the end of 2002.

Brobeck was one of eight legal firms included in Ross Research recent study about the global sourcing advisory services market. Ironically, the final report (of a four-part series) is ready for publication soon. During the development of the report series, Ross Research learned that Brobeck employed 17 lawyers with expertise in sourcing advisory services, generating revenues of about \$8-12 million in 2002. It was a small practice relative to the overall size of the firm which generated a total of almost \$450 million – i.e. comprising less than 5%. Yet, it was deemed to be a successful and flourishing practice with prominent clients, such as AT&T, American Express Bank, Ryder Systems, JP Morgan Chase, Reuters America, Broadband Services, and Commonwealth Bank of Australia. It prided itself for its "thinking-outside-the-box" capabilities and in-depth knowledge of technology. It was one of the few legal firms that made significant investments in marketing and advertising. For example, it was the very first major law firm to run national TV advertising.

Although it is always tragic when a community loses one of its members, several prominent sourcing attorneys with whom Ross Research spoke "off the record" this past week indicated that Brobeck's dissolution has little, if anything, to do with what's going on in the sourcing advisory market and will have no discernable impact. And, of course the sourcing advisory practice was much too small at Brobeck to have played any role in its demise. While intellectual capital is of course the essence of consulting and advisory firms, David Klein from Shearman & Sterling – a prominent international law firm with specialty in providing sourcing advisory services – pointed out that: "Brobeck's talent and expertise will not be lost to the industry. It will

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simply be absorbed by other sourcing advisory practices as Brobeck consultants find jobs elsewhere."

For a while after Brobeck's announcement, it had been somewhat unclear whether or not the firm would actually close its doors for good, but now every indication is that the firm is planning to do so. Its website currently reads: "Brobeck is winding down its operations as a law firm. We expect that process to be substantially completed by the end of February..." It is sad to see a great organization like Brobeck become yet another victim of the bust of the dotcom era, but life in the sourcing advisory services marketplace will certainly go on...and flourish.

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Note: *Contributed by: Marianne Hedin, Ph.D., Vice President of Research, Ross Research, mhedin@rossresearch.com*

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PTO/SB/17 (10-03)

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PAC #

FEE TRANSMITTAL

MAY 11 2004

for FY 2004

Effective 10/1/2003. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT

(\$)

Complete if Known

Application Number	09/853,337
Filing Date	May 10, 2001
First Named Inventor	Link, Gayle R
Examiner Name	
Art Unit	OFF
Attorney Docket No.	

MAY 17 2004

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☒ Money Order ☐ Other ☐ None

☐ Deposit Account:

Deposit Account Number
Deposit Account Name

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Credit any overpayments
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☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1) (\$)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims -20** = X =
Independent Claims -3** = X =
Multiple Dependent =

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1202	18	2202	9	Claims in excess of 20	
1201	86	2201	43	Independent claims in excess of 3	
1203	290	2203	145	Multiple dependent claim, if not paid	
1204	86	2204	43	** Reissue independent claims over original patent	
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent	

SUBTOTAL (2) (\$)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	665
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 665.00

SUBMITTED BY

(Complete if applicable)

Name (Print/Type)	Gayle R. Link	Registration No. (Attorney/Agent)		Telephone	404-543-8300
Signature		Date	05/12/2004		

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